



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00CX/LDC/2024/0618**

Property : **20 Manley Road, Ilkley, West
Yorkshire LS29 8QP**

Applicant : **Redgarth Management Ltd**

Representative : **Lee Carney**

Respondents : **Kate Ives; Sandra McIntyre**

Representative : **Donald Pirie, Uk Legal Advisers**

Type of Application : **Landlord and Tenant Act 1985 –
Section 20ZA**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S. A. Kendall**

**Date of
Determination** : **17th June 2025**

Date of Reasons : **17th June 2025**

DECISION

Decision

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 relating to works carried out to the chimneys at 20 Manley Road, Ilkley is refused.

Background

2. This is an application made by Redgarth Management Ltd (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the 1985 Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) relating to works carried out to the four chimneys at 20 Manley Road Ilkley (“the Property”). The required works included lead flashing, repointing and weather sealing. Such works are qualifying works as defined by section 20 of the Act.
3. The Property comprises 4 flats, one of which is owned by Lee Carney. The Respondents Kate Ives and Sandra McIntyre are the leaseholders of the top floor flat and Flat 2 respectively. The leaseholder of Flat 1, Katherine Worsfold, was not a party to the proceedings having agreed the work carried out by the Applicant and having paid her share of the costs.
4. The application to the Tribunal is dated 24th November 2024 and in respect of which directions were issued on 25th April 2025 providing for the filing of any objections by the Respondents and for the application to be determined without a hearing.
5. The Tribunal received objections to the application from the Respondents.
6. The matter was listed for a determination on 4th June 2025 when further directions were given for the Applicant to file additional information regarding an Improvement Notice for the Property. The application was listed for a determination on 17th June 2025.

The Law

7. Section 20 of the Act provides:

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-

- (a) complied with in relation to the works or agreement, or*
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal*

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement

(3) This section applies to qualifying works if relevant costs incurred on

carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined”

8. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

9. Section 20ZA of the Act provides:

(1) Where an application is made to a tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works, or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements

(2) In section 20 and this section-

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to section (3) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

10. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should

consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Those guidelines are:

(a) The correct legal test for an application for dispensation would be:

“Would the flat owners suffer any relevant prejudice, and if so, what relevant prejudice, as a result of the landlord’s failure to comply with the requirements?”

(b) The purpose of the consultation is to ensure leaseholders are protected from paying for inappropriate works or paying more than an appropriate sum.

(c) Whether the leaseholders have been prejudiced in either respect by the landlord’s failure to comply.

(d) The factual burden of identifying relevant prejudice falls to the leaseholders and having established this, it is for the landlord then to rebut it.

(e) The leaseholders should establish what steps they would have taken had the breach not happened and how they have been prejudiced.

11. In **Wynne v Yates and others [2021] UKUT 278 LC** Upper Tribunal Judge Elizabeth Cooke said:

“There must be some prejudice to the tenants beyond the obvious fact of not being able to participate on the consultation process.”

Submissions

12. Lee Carney confirmed he was a director of the Applicant and made the application on its behalf for dispensation pursuant to s.20ZA of the 1985 Act for remedial work required to four chimneys at the Property. He was appointed to that role in 2017. He stated that problems had arisen with the roof to the Property resulting in roof and chimney repairs in 2016 at a cost of £31200. Further problems then arose in 2018 at which time he obtained a report to confirm remedial work was necessary. He sought agreement for repairs to be carried out, without success. In 2024 he let out his flat but the tenants complained of mould and reported this to Bradford City Council. In his application he advised an Improvement Notice had been issued.
13. Due to the lack of co-operation regarding the repairs, Lee Carney arranged for remedial works to be carried out at a cost of £6963, resulting in each leaseholder being liable for £1740. The work was carried out in October and December 2024. He advised details of the costs were sent to the Respondents in November 2024 with no response. Katherine Worsfold paid her share of the costs, the flat having belonged to her late mother, but the Respondents did not.
14. Lee Carney confirmed that having taken advice he had issued the application in his role as director of the Applicant.
15. A copy of the report completed by Hornes Surveyors in 2018, commissioned by Lee Carney, confirmed work was required to the chimney stacks to prevent water ingress and damp.
16. In response to the application, Kate Ives filed a statement confirming her top floor has been severely affected by damp due to the defective chimneys. She had

had remedial work done to the chimney above her flat but did not seek any financial contribution from the other leaseholders. In her statement she also advised of problems she had experienced with Lee Carney in respect of other issues in the Property and this had governed her decision to cover the repair costs herself. She also made some serious allegations regarding Lee Carney's behaviour towards her, including a threat to kill her in 2020.

17. Kate Ives stated her partner was a builder who had contacts to source a roofing contractor and would be able to secure preferential rates. She therefore objected to the work done to the Property without consultation. She provided an extract of an e-mail sent by her in November 2024 to Lee Carney in which she reminded she had arranged for remedial work to a second chimney. The materials and contractors had been paid for and she again was not seeking any financial contribution from the other leaseholders.
18. The Tribunal received correspondence from Donald Pirie from UK Legal Advisers who was representing the Respondents dated 10th June 2025. This followed the further directions issued by the Tribunal on 4th June. The directions did not provide for the filing of further evidence by the parties and consequently has not been admitted into evidence.

Determination

19. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where "*if satisfied that it is reasonable to dispense with the requirements*".
20. The Tribunal, having considered the submissions made by the Applicant, is not satisfied there is good reason to dispense with the consultation requirements.
21. The Applicant stated issues regarding water and damp arose in 2018 after repairs were carried out in 2016. This issue continued until 2024 when Lee Carney, as director of the Applicant, arranged for repairs to be carried out at a cost of £6963, resulting in a contribution of £1740 from each of the other 3 leaseholders. The explanation for the work being done at this time was the issue of an Improvement Notice by Bradford City Council.
22. The Tribunal notes from the copy documentation provided it was not an Improvement Notice that was issued by Bradford City Council but a Notice of Works Required. The Notice encompassed several areas of work but included remedial work for Damp and Mould. It stated the works had to be carried out before the commencement of a new tenancy. There was no date by which the work had to be completed and, as such, this was not a reason for non-compliance with the consultation requirements.
23. The Tribunal took note the work had been necessary since 2018 and yet there had been no attempt to carry out any consultation in compliance of the statutory requirements since then.
24. The Tribunal determined there had been prejudice to the Respondents. The failure to comply with the statutory consultation requirements meant there was no choice in who carried out the remedial works. Kate Ives had advised she had the contacts to obtain a reduction in the costs and any opportunity for that to be considered had been lost. Lee Carney, as director, had arbitrarily decided he should arrange the work and then seek retrospective consent.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the rounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).